IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5165 OF 2004

Prakash Ramchandra Pisal & Ors..... Petitioners.

Versus

Chandramohan Jaysing Pisal & Anr... Respondents.

Mr. Amit Borkar for the Petitioners.

Mr. V. B. Rajure for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : 5TH APRIL, 2005.

P.C.:

Rule.

2. Mr. Rajure, learned Counsel appears and waives service of Rule on behalf of the Respondents. By Consent, Rule made returnable forthwith and taken up for hearing.

3. This is a petition under Article 227 of the Constitution of India against the order dated 20th April, 2004 rejecting petitioners' request for appointment of a Commissioner to inspect the site in

question.

4. The petitioners have sued the respondents for removal of obstruction to the flow of drainage. They therefore sought for appointment of the Commissioner which was granted by the Court on 30th January, 2004. The Commissioner in his report dated 11th March, 2004 has clearly stated that the respondents opposed inspection of examination of the drainage pipe after digging a portion on the earth where the drainage pipe is fixed.

5. Therefore, the petitioners applied for appointment of another Commissioner. This has been rejected by the Court on the ground that the Commissioner has not reported any obstruction. This is factually incorrect.

6. Mr. Rajure, learned Counsel for the respondents, submitted that there was no obstruction which is apparent from the fact that the Commissioner completed his work. It is obvious that the Commissioner completed his work by pouring coloured water and seeing that whether the water came out from the other end. He could not factually inspect the drainage

pipe. The contention of the respondents is, therefore, not acceptable.

7. Normally, a matter like this should not call for interference by this Court. However, since this is the only point in dispute for the resolution for which a Commissioner was appointed, I consider it appropriate to set aside the impugned order and direct the trial Court to appoint a suitable Commissioner on such terms as it considers appropriate.

8. Trial Court is directed to take a strict view of any obstruction if offered by the respondents.

9. Rule made absolute in the above terms. This petition is disposed of, accordingly.

Sd/-

(S. A. BOBDE, J.)